United Nations A/65/281

General Assembly

Distr.: General
11 August 2010

Original: English

Sixty-fifth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Members of the General Assembly the interim report of the Special Rapporteur on the right to food, Olivier De Schutter, submitted in accordance with General Assembly resolution 64/159.

* A/65/150.

10-48230 (E) 150910

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Report of the Special Rapporteur on the right to food

Summary

Access to land and security of tenure are essential for the enjoyment of the right to food. The present report explores the threats posed by the increasing pressures on land and on three categories of land users: indigenous peoples, smallholders and special groups such as herders, pastoralists and fisherfolk. It explores how States and the international community could better respect, protect and fulfil the right to food by giving increased recognition to land as a human right.

The report argues that, while security of tenure is indeed crucial, individual titling and the creation of a market for land rights may not be the most appropriate means to achieve it. Instead, the report suggests, the strengthening of customary land tenure systems and the reinforcement of tenancy laws could significantly improve the protection of land users. Drawing on the lessons learned from decades of agrarian reform, the report emphasizes the importance of land redistribution for the realization of the right to food. It also argues that development models that do not lead to evictions, disruptive shifts in land rights and increased land concentration should be prioritized.

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I. Introduction

1. One billion people are hungry today.[1] For the vast majority — smallholders or agricultural workers, herders, artisanal fisherfolk and members of indigenous communities — access to land is a condition for the achievement of a decent standard of living.[2] The reason why approximately 500 million people depending on small-scale agriculture are hungry is not only that the price they receive for their crops is too low and they are less competitive than larger production units, but also that they cultivate plots that are often very small — which makes the vast majority of them net food buyers — and they are often relegated to soils that are arid, hilly or without irrigation as they compete against larger productive units for access to land and water. Whether because small-scale farming has become non-viable or because they have been expelled from the land in the absence of effective security of tenure, many such farmers become agricultural workers on large-scale plantations, where they are often paid lower than subsistence wages and left without social or legal protection. Artisanal fisherfolk pastoralists and agro-pastoralists now face a similar threat: as land becomes scarcer, they increasingly risk being excluded from the fishing and grazing grounds on which they have been able to rely for generations. And the precarious position of indigenous peoples and forest-dwelling populations may be attributed in particular to the increased pressure on the forests on which they depend for their livelihoods.

2. Access to land is thus closely related to the right to adequate food, as recognized under article 25 of the Universal Declaration of Human Rights[3] and article 11 of the International Covenant on Economic, Social and Cultural Rights.[4] The right to food requires that each individual, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.[5] States may be under an obligation to provide food where "an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal".[6] Primarily, however, the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil).[7]

3. For some of the groups that are the most vulnerable today, this means protecting existing access to land, water, grazing or fishing grounds, or forests, all of which may be productive resources essential for a decent livelihood. In such cases, as detailed below, the right to food may complement the protection of the

[1] Food and Agriculture Organization of the United Nations (FAO), *The State of Food Insecurity in the World: Economic Crises — Impacts and Lessons Learned*, (2009), p. 11.

[2] United Nations Millennium Project, *Halving Hunger: It Can Be Done: Summary Version* (United Nations Development Programme (UNDP), 2005), p. 6.

[3] General Assembly resolution 217 A (III).

[4] See General Assembly resolution 2200 A (XXI), annex.

[5] E/C.12/1999/5, para. 6.

[6] Ibid., para. 15.

[7] Ibid., para. 15.

right to property[8] or of indigenous peoples' relationship with their lands, territories, and resources. In other cases, because landlessness is a cause of particular vulnerability,[9] the obligation of the State goes further: it is to strengthen such access or make it possible — for example, through redistributive programmes that may in turn result in restrictions on others' right to property. This obligation of States is especially clear in cases in which the members of such groups have no alternative means of producing food or gaining sufficient income to purchase food that is sufficient, adequate and culturally acceptable.[10]

4. Access to land and security of tenure are essential to ensure the enjoyment of not only the right to food, but also other human rights, including the right to work (for landless peasants) and the right to housing. This fact led the former Special Rapporteur on the right to adequate housing to conclude that the Human Rights Council should "ensure the recognition in international human rights law of land as a human right".[11] The present report confirms that conclusion, while taking the right to food as its departure point. It describes the increasing pressures on land. It then discusses the right of land users to be protected in terms of their existing access to natural resources, particularly land. It also argues in favour of ensuring more equitable access to land.

5. The conclusions presented in the present report are based on civil society consultations held in Bamako from 8 to 10 December 2009, in Kuala Lumpur on 23 and 24 March 2010, and in Chennai, India, on 28 and 29 March 2010. They also result from the analysis of 117 cases sent to the Special Rapporteur by non-governmental organizations following a public appeal made by the Special Rapporteur on 15 December 2009. The Special Rapporteur expresses his deep gratitude to the Governments that responded to a questionnaire sent on 4 March 2010, including Albania, Belarus, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Cameroon, Canada, Colombia, Georgia, Germany, Guyana, Jordan, Kazakhstan, Malawi, Mexico, Montenegro, Norway, Oman, Peru, the Republic of Moldova, Saudi Arabia, the Syrian Arab Republic, Switzerland, Turkmenistan, the United Kingdom of Great Britain and Northern Ireland, and Uruguay. The Special Rapporteur also benefited from expert briefs prepared at his request.[12] Finally, the report takes into account a lesson that can be drawn from the communications sent to Governments or non-governmental entities by the Special Rapporteur and his predecessor: during the period from 2003 to 2009, as an indication of the importance of the issue of land with respect to the right to food, 115 of the 183 communications sent by the mandate-holders concerned rights related to the use of land and the right to food.

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[8] Christophe Golay and Ioana Cismas, *Legal Opinion on the Right to Property from a Human Rights Perspective* (Rights & Democracy and Geneva Academy of International Humanitarian Law and Human Rights, 2010).

[9] E/C.12/1999/5, para. 13.

[10] Lorenzo Cotula et al., *The Right to Food and Access to Natural Resources: Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor* (FAO, 2008), pp. 23 and 59.

[11] A/HRC/4/18, para. 31.

[12] The Special Rapporteur gratefully acknowledges the contributions of the Leitner Centre for International Law and Justice, Fordham University School of Law; the Human Rights Clinic, Columbia Law School; the International Human Rights Clinic, New York University School of Law; and the Environmental Law Clinic, Columbia Law School.

II. Existing pressures on land

6. The pressures on land are increasing dramatically. As rural populations grow, plots cultivated are becoming smaller per capita and per household. In India, the average landholding size fell from 2.6 hectares in 1960 to 1.4 hectares in 2000 and continues to decline; similar evolutions have been documented in Bangladesh, the Philippines and Thailand, where the decline in the average farm size is combined with an increase in landlessness.[13] The trend is not limited to the Asian region. In Eastern and Southern Africa, the amount of cultivated land per capita declined by half over the past generation, and in a number of countries the average cultivated area now amounts to less than 0.3 hectares per capita.[14] This phenomenon is compounded by erosion and soil depletion: worldwide, 5 million to 10 million hectares of agricultural land are being lost annually to severe degradation.[15] And it would be difficult to expand the areas under cultivation to the degree required to accommodate the growth of rural populations, since forests have a major role in storing carbon and deforestation is already a major contributor to greenhouse gas emissions.[16]

7. These long-term trends have been exacerbated in recent years by policies that have further increased the pressures on farmland. In many regions, under export-driven agricultural policies, large-scale plantations have developed for the production of food, energy or cash crops. While the tendency towards land concentration has resulted primarily from a dominant model of agricultural development that rewards the most mechanized and capital-intensive farms, it has also been encouraged by the expansion of long supply chains. This has generally favoured large agricultural producers, which are better connected to markets and can more easily produce the volumes and meet the standards required for export. The competition among various uses of farmland has recently been increased by policies favouring the switch to biofuels in transport, which leads to competing resource claims on the part of local resource users, Governments and incoming agrofuel producers, creating the risk that poorer groups will lose access to the land on which they depend.[17] A recent inventory by the World Bank listing 389 large-scale acquisitions or long-term leases of land in 80 countries shows that, while 37 per cent of the so-called investment projects are intended to produce food (crops and livestock), agrofuels represent 35 per cent of such projects.[18] For all these reasons, the Special Rapporteur has insisted that investments implying a shift in land rights should be treated with great caution.[19] At the thirty-sixth session of the Committee on World Food Security, he will detail both the risks of large-scale land investments and possible alternative business models.

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[13] World Bank, *World Development Report 2008: Agriculture for Development* (2007), pp. 118-119.

[14] International Fund for Agricultural Development, *Improving Access to Land and Tenure Security*, EB 2008/94/R.2 (2008), p. 7.

[15] Ibid.

[16] Intergovernmental Panel on Climate Change, *Climate Change 2007: Synthesis Report* (2007). It is estimated that forests store 45 per cent of terrestrial carbon.

[17] See A/HRC/9/23, paras. 25-34 and annex II.

[18] At the time of reporting, this study had not been made public. The figures are from presentations made by the World Bank, most recently at its spring meetings with the International Monetary Fund held in Washington, D.C., on 24 and 25 April 2010.

[19] A/HRC/13/33/Add.2.

8. Measures adopted with a view to climate change mitigation or environmental conservation, which have placed priority on technological and market-based solutions over the deconcentration of land in order to encourage more sustainable land uses, have created further conflicts with the rights of land users. Under the clean development mechanism provided for in article 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change,[20] annex I (industrialized) countries that have committed to reducing greenhouse gas emissions receive additional emission credits if they help to implement emissions-reducing projects in developing countries. However, the planting of forests in order to benefit from the mechanism may result in evictions, against which the local populations concerned may be insufficiently protected. The REDD (Reducing Emissions from Deforestation and Forest Degradation) scheme, launched in 2005 and strengthened at the 13th Conference of the Parties to the United Nations Framework Convention on Climate Change, convened in Bali in December 2007,[21] may represent a threat to forest dwellers, whose customary rights over the forests on which they depend for their livelihoods are not widely recognized, if the State or other actors are tempted to appropriate the benefits derived from carbon sequestration. Governments are also working to protect natural environments by creating wildlife reserves, national parks and other protected areas. Ecosystems perform vital services for agriculture, including support of the soil structure and soil retention, nutrient cycling, dung burial and pest control, pollination, water provision and purification, biodiversity and atmospheric regulation.[22] However, the implementation of conservation measures, including land-use planning, should take into account the right to food of people who depend on the land for their livelihoods.

9. Industrial uses of land and urbanization have also increased in recent years, further heightening the competition: 19.5 million hectares of farmland are converted annually into land for industrial and real estate development.[23] Researchers have documented cases in which farmers' lands have been expropriated for mining projects or for the building of industrial plants, in conditions amounting to forced eviction with no or insufficient compensation.[24] In certain regions, the expansion of industrial areas has taken the form of the establishment of special economic zones aimed at creating conditions favourable for the arrival of foreign investors.[25] Large infrastructure projects such as dams and highways have also had an important impact, and a significant proportion of the communications sent to Governments by the Special Rapporteur during the period from 2003 to 2009 relates to evictions for such projects.

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[20] United Nations, *Treaty Series*, vol. 2303, No. 30822.

[21] See David J. Kelly, "The case for social safeguards in a post-2012 agreement on REDD", *Law Environment and Development Journal* (2010), p. 61; Tom Griffiths, *Seeing "RED"? "Avoided Deforestation" and the Rights of Indigenous Peoples and Local Communities* (Forest Peoples Programme, 2007); and Simone Lovera, *The Hottest REDD Issues: Rights, Equity, Development, Deforestation and Governance by Indigenous Peoples and Local Communities* (Global Forest Coalition, 2008).

[22] Wei Zhang et al., "Ecosystem services and dis-services to agriculture", *Ecological Economics*, vol. 64, No. 2 (2007), pp. 253-260.

[23] FAO, Land Policy and Planning web pages, http://www.fao.org/nr/land/land-policy-and-planning/en/.

[24] See Malcolm Langford and Ujjaini Halim, "Expropriation and eviction: grassroots and human rights perspectives on compulsory acquisition", Global Land Tool Network working paper (2007).

[25] See Wei Ge, "Special economic zones and the opening of the Chinese economy: some lessons for economic liberalization", *World Development*, vol. 27, No. 7 (1999), pp. 1267-1285.

III. Protection of land users

10. The pressures referred to above exacerbate conflicts over land and lead to a worrisome criminalization of social movements aimed at carrying out agrarian reforms "from below", including by claiming land that is unused and, in their view, should be distributed more equitably. As a result, serious violations of a range of human rights occur, including murders of peasants connected to such activities, which the Special Rapporteur has documented in a number of communications to States. But the increased pressures on land are also a source of concern because of the weak protection of those who depend most on the land for their survival: smallholders, traditional fisherfolk, pastoralists and peoples (including indigenous and tribal peoples) that rely on the products of the forest. The present report first addresses the situation of indigenous peoples, which is specific insofar as the right of such peoples to have their lands demarcated and protected is recognized under international law. It then considers the position of smallholders, who cultivate the land in conditions that are often insufficiently secure, and that of other land users, such as fisherfolk, pastoralists and herders, who are particularly dependent on commons. The key message is that, while security of tenure is important and should be seen as crucial to the realization of the right to food, individual titling and the creation of a market for land rights may not be the most appropriate means to achieve it.

A. Indigenous peoples

11. Indigenous peoples are increasingly victims of the exploitation of natural resources on their lands, which are often regarded as belonging to the State. The demarcation of their lands and territories is a lengthy process that includes many obstacles. Participation is generally lacking. Yet, International Labour Organization (ILO) Convention No. 169, concerning indigenous and tribal peoples in independent countries, which entered into force in 1991, provides for a number of guarantees related to land. Although the Convention has been insufficiently ratified,[26] that has been compensated for in part through the adoption on 13 September 2007 by the General Assembly, in its resolution 61/295, of the Declaration on the Rights of Indigenous Peoples, which contributes to the formation of international customary law on this issue.[27] The Declaration provides, in its article 8 (2) (b), that States should prohibit "any action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources", a requirement that replicates article 18 of ILO Convention No. 169. It also prohibits, in its article 10, any forcible removal of indigenous peoples from their lands or territories, imposing the requirements of free, prior and informed consent, agreement on just and fair compensation and, where possible, the option of return (for relocations).

12. In addition, the right of all peoples to freely dispose of their natural wealth and resources — as provided for in article 1 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 and in article 1 of the International Covenant on Civil and Political Rights of 16 December 1966[28] — entails the

[26] Only 20 States had ratified the Convention at the time of reporting.

[27] General Assembly resolution 61/295, annex.

[28] See General Assembly resolution 2200 A (XXI), annex. See also Human Rights Committee, *Apirana Mahuika et al. v. New Zealand* (Communication No. 547/1993, CCPR/C/70/D/547/1993, 2000), para. 9.7.

protection of indigenous peoples from certain forms of dispossession from their territories or from the resources on which they depend. Article 5 (d) (v) of the International Convention on the Elimination of All Forms of Racial Discrimination also protects the right of indigenous communities to their lands.[29] And the right of indigenous peoples to the official recognition and registration of their territories has been affirmed under relevant regional human rights instruments. The Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights consider that indigenous people's traditional possession of their lands has effects equivalent to those of a State-granted full property title: therefore, where members of indigenous peoples have unwillingly lost possession of their lands after a lawful transfer to innocent third parties, they are entitled to the restitution thereof or to obtain other lands of equal extension and quality.[30] The right of indigenous communities to their lands includes the right to the natural resources contained therein.[31] Property, as protected under article 21 of the American Convention on Human Rights, is considered to constitute a collective right of indigenous people, since land ownership is often centred not on the individual, but rather on the group and its community.[32] Thus, States may have to recognize the customary systems of land tenure that protect communal property rights — for example, by giving the community a right to veto the alienation of its land by one of its constituent members, whether an individual or a clan, village or tribe.

13. International human rights law protects the relationship of indigenous communities with their lands, territories and resources by requiring States to demarcate such land, protect it from encroachment and respect the right of the communities concerned to manage it according to their internal modes of organization. Although sometimes those guarantees seem to be honoured more in the breach than in the observance, case law shows that use rights derived from customary tenure can be recognized and protected by the legal system; it also shows that the right to communal property — a right of the community rather than of the individual — is an alternative to individual property rights. On both counts, it can serve as a source of inspiration, in order to enhance the protection of the rights of other users of natural resources.

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[29] See CERD/C/GUY/CO/14 (Guyana) and CERD/C/KHM/CO/8-13 (Cambodia).

[30] Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay* (judgement of 29 March 2006), para. 128; African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (Communication No. 276/2003, 2009), para. 209; Inter-American Court of Human Rights, *Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua* (judgement of 31 August 2001), paras. 151 and 164.

[31] African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria* (Communication 155/96, 2001), paras. 42, 54 and 55.

[32] Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (judgement of 31 August 2001), para. 148; *Sawhoyamaxa Indigenous Community v. Paraguay* (judgement of 29 March 2006), para. 120. This view is shared by domestic courts: see Supreme Court of Canada, *Delgamuukw v. British Columbia* (judgement of 11 December 1997), paras. 194, 199 and 201; Constitutional Court of South Africa, *Alexkor Ltd and Another v. Richtersveld Community and Others* (judgement of 14 October 2003), para. 62.

B. Smallholders cultivating land

14. Access to land and security of tenure are also essential for the ability of smallholders to achieve a decent standard of living. As noted above, the right to food imposes on States an obligation not to deprive individuals of access to the productive resources on which they depend. Where a community has settled on a piece of land and depends on that land for its livelihood, the obligation to respect the right to food thus requires that eviction of the community from that land be prohibited unless certain conditions are fulfilled. No eviction should take place that does not meet the criteria set out by the Committee on Economic, Social and Cultural Rights in its general comment No. 7, on the right to adequate housing: forced evictions,[33] and in the Basic Principles and Guidelines on Development-Based Evictions and Displacement.[34] Those guidelines provide a practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place or, should prevention fail, to provide effective remedies to those whose human rights have been violated.

15. Under the right to property, land users are also protected from evictions in certain circumstances, as stipulated in article 17 of the Universal Declaration of Human Rights, article 14 of the African Charter on Human and Peoples' Rights, article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and article 21 of the American Convention on Human Rights. While the conditions under which eviction may take place vary from instrument to instrument, the most common requirements are the following: an eviction must have a valid (or legitimate) public purpose (a condition that should exclude eviction to serve purely private interests); it must not be discriminatory; it must meet the requirements of due process; and it must be accompanied by fair compensation. Although this protection from arbitrary expropriation does not in principle extend to all forms of illegal occupation,[35] it generally extends to forms of land occupation that are not formally recognized through a legal title ("extra-legal") or that are based only on customary tenure.

16. It has been argued that improving security of tenure encourages smallholders to invest in the land,[36] and in principle it could lower the cost of credit by increasing the use of land as collateral. It could also encourage more sustainable farming, particularly through the planting of trees and through more responsible use of the soil and water resources. The real question, however, is not whether security of tenure should be improved, but how. The classical approach has consisted of individual titling, combined with the establishment of cadastres, or land registries, to facilitate and secure transactions related to land. That approach is linked to the

[33] E/1998/22-E/C.12/1997/10, annex IV.

[34] A/HRC/4/18, annex I.

[35] However, even where a person has established him- or herself illegally on a given area, he or she may, depending on the context and, in particular, on the alternatives available, be protected from forcible removal: see Constitutional Court of South Africa, *Government of the Republic of South Africa and Others v. Grootboom and Others* (judgement of 4 October 2000) and European Court of Human Rights, *Öneryildiz v. Turkey* (judgement of 30 November 2004).

[36] Klaus Deininger, *Land Policies for Growth and Poverty Reduction* (World Bank, 2003), pp. 115-116; Klaus Deininger and Songqing Jin, "Tenure security and land-related investment: evidence from Ethiopia", *European Economic Review*, vol. 50(5) (2006), pp. 1245-1277; World Bank, *World Development Report 2008*, p. 138.

idea that security of tenure is primarily a means to promote integration into the market: once property has been legally recognized, it can be alienated or mortgaged so that the beneficiaries can leave agriculture or obtain cash to make the necessary investments in the land. In the late 1970s and throughout the 1980s — and more recently, under the influence of the writings of Hernando de Soto,[37] international financial institutions promoted land registration and titling as part of their structural adjustment programmes, in the hope that successful land markets would ensure efficient land allocation and spur economic growth, which in turn was seen as the key to addressing rural poverty and food insecurity.[38]

17. The effort to transplant the Western concept of property rights has created a number of problems, however. Unless it is transparent and carefully monitored, the titling process itself may be appropriated by local elites or foreign investors, with the complicity of corrupt officials. In addition, if it is based on the recognition of formal ownership, rather than on land users' rights, the titling process may confirm the unequal distribution of land, resulting in practice in a counter-agrarian reform. In particular, this will be the case in countries in which a small landed elite owns most of the available land, having benefited from the unequal agrarian structure of the colonial era. There is also a risk that titling will favour men. Any measures aimed at improving security of tenure should instead seek to correct existing imbalances, as the Land Management and Administration Project in Cambodia does.

18. Individual titling can also become a source of conflict and legal insecurity if it conflicts with customary rules regarding tenure, for example, as regards communal land ownership. Indeed, individual titling, combined with the marketability of land, may not be compatible with the recognization of customary forms of tenure with respect to communal land and common property resources, putting groups that do not use the land intensively or do not occupy it permanently at a particular disadvantage.

19. Finally, the creation of a market for land rights may itself have a series of undesirable consequences. The primary justification for the establishment of such a market is that it facilitates the reallocation of land towards more efficient users, thus providing an exit route from agriculture for rural residents for whom farming is not sufficiently profitable. Accordingly, the World Bank notes, "secure and unambiguous property rights ... allow markets to transfer land to more productive uses and users".[39] However, the impact of titling on farm productivity has often been unclear when it has not been complemented by schemes providing producers with appropriate levels of support.[40] Land sales tend to favour not those who can make the most efficient use of land, but those who have access to capital and whose ability to purchase land is greatest.[41] In fact, the creation of a land rights market can

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[37] Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Basic Books, 2000).

[38] Manpreet Sethi, "Land reform in India: issues and challenges", in *Promised Land: Competing Visions of Agrarian Reform* (Food First Books, 2006), p. 77.

[39] World Bank, *World Development Report 2008*, p. 138.

[40] See Frank Place and S. E. Migot-Adholla, "The economic effects of land registration on smallholder farms in Kenya: evidence from Nyeri and Kakamega districts", *Land Economics*, vol. 74, No. 3 (1998), pp. 360-373.

[41] Celestine Nyamu Musembi, "De Soto and land relations in Africa: breathing life into dead theories about property rights", in *Market-Led Agrarian Reform: Critical Perspectives on Neoliberal Land Policies and the Rural Poor*, Saturnino M. Borras Jr. et al., eds. (Routledge, 2008).

cause land to be taken out of production in order to be held as an investment by speculators, resulting both in decreased productivity and in increased landlessness among the rural poor.[42] The poorest farmers could easily be induced to sell land and then be "priced out", particularly if they have fallen into debt as a result of a bad harvest or other circumstances. Thus, considered in isolation from other policies, individual titling may have counterproductive effects, increasing the vulnerability of the poor.[43] Indeed, the idea that individual titling contributes to poverty reduction as land is transformed into capital[44] presupposes that property is transformed into collateral, collateral into credit and credit into income.[45] However, the poor, for whom land is an essential social safety net where no others are available, may in fact be reluctant to mortgage their land in order to gain access to credit. Nor does titling necessarily result in significantly greater access to the credit offered by private financial institutions.

20. Individual titling appears to matter less to the poor than security of tenure, reflecting the fact that "[a]t low levels of income and in the absence of other social security mechanisms, land serves as a social safety net for the rural poor and provides them their basic means of livelihood".[46] In other words, while security of land tenure and recognition of land rights may correspond to strong demand, as illustrated by a number of country experiences, the same cannot be said of individual titling and the alienability of land. On the contrary, the limiting of land sales can protect smallholders from pressure to cede their land; it can also protect use rights regarding communal land and preserve communal forms of land management.[47] There is growing experience with the use of low-cost, accessible tools for recording local land rights, or at least land transactions, to ensure security of tenure through the recognition of use rights rather than full ownership. Examples include the "Plan foncier rural", implemented in Benin and tested in Burkina Faso, and the $1 registration process leading to the issuance of certificates in some Ethiopian states. An interesting illustration of the decentralized management of land rights is Law 2005-019 of Madagascar, setting forth the status of land.[48]

21. This indicates a fundamental opposition between two concepts of security of tenure; one oriented towards promoting land marketability through titling, and the other oriented towards broadening the entitlements of the relevant groups in order to ensure more secure livelihoods.

22. A number of countries, particularly in Africa, have extended formal legal recognition to existing customary rights, including collective rights, as an alternative to individual titling. Typically, neither individual members of households nor communities, through their representatives, can dispose of their land, for

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[42] See Rebeca Leonard and Kingkorn Narintarakul Na Ayutthaya, "Thailand's land titling programme: securing land for the poor?", pp. 139-141.

[43] Ana Palacio, *Legal Empowerment of the Poor: An Action Agenda for the World Bank* (2006), p. 18.

[44] See De Soto, *The Mystery of Capital*.

[45] Christopher Woodruff, "Review of De Soto's *The Mystery of Capital*", *Journal of Economic Literature*, vol. 39 (2001), p. 1218.

[46] Palacio, *Legal Empowerment of the Poor*, p. 16.

[47] John W. Bruce et al., *Land Law Reform: Achieving Development Policy Objectives* (World Bank, 2008), pp. 126-128.

[48] André Teyssier, *Perspective No. 4 — Decentralising Land Management: The Experience of Madagascar* (CIRAD, 2010).

example, by selling it. Yet, the formal legal recognition of customary rights provides effective security. It favours long-term investments in the land. It may also facilitate access to credit, since creditors (although they will not be able to take possession of the land in the event of default) can be assured of the long-term viability of the investments that they help to finance. And it allows for the emergence of rental markets, which can improve access to land, particularly for land-scarce and labour-abundant households with little education.[49] At the same time, there is a high risk that traditional, patriarchal forms of land distribution will be further legitimized through the recognition of customary forms of tenure, in violation of women's rights. Such risks should be addressed through the inclusion of strict safeguards in the process of such recognition.

23. As customary forms of tenure are recognized, the relationship between individual and communal rights may vary. For instance, communal land rights may be formalized as an aggregation of individual rights. In Cambodia, although land may be held by indigenous communities as a whole, the 2001 Land Law allows individual community members to leave and receive their share of communal land, subject to the agreement of the entire community.[50] Another approach is to allow local community authorities to administer rights.[51] In Latin American States where indigenous groups have been granted both political rights and land rights, such groups have been able to achieve a degree of autonomy over land management, while gaining tenure security.[52]

24. True legal empowerment of the poor, then, should be seen as including the following: (a) a protection from eviction; (b) the provision of tools (legal aid, legal literacy training, paralegals) to ensure that formally recognized rights can be effectively defended;[53] (c) support for land users in their utilization of the land; and (d) strengthening of the capacity of land administrations and efforts to combat corruption in those administrations. Individual titling schemes should be encouraged only where they can be combined with the codification of users' rights based on custom, and where the conditions have been created to ensure that the establishment of a land rights market will not lead to further land concentration. Customary forms of tenure, which are often perceived as highly legitimate,[54] should be recognized although it is important that such systems be carefully scrutinized and, if necessary, amended, to bring them into line with women's rights, the use rights of those who depend on commons and the rights of the most vulnerable members of the community.

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[49] See Klaus Deininger et al., "Efficiency and equity impacts of rural land market restrictions: evidence from India", *World Bank Policy Research Working Paper Series* 3013 (2006).

[50] Centre on Housing Rights and Evictions, "Untitled: Tenure insecurity and inequality in the Cambodian land sector" (2009).

[51] Klaus Deininger, "Land policies for growth and poverty reduction: key issues and challenges ahead" (2004).

[52] Ruth Meinzen-Dick et al., "Decentralization, pro-poor land policies and democratic governance", CAPRi Working Paper No. 80 (2008), p. 20.

[53] Lorenzo Cotula and Paul Mathieu, eds., *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (FAO and International Institute for Environment and Development, 2008).

[54] African Union, Economic Commission for Africa and African Development Bank, *Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods* (2009), para. 3.1.3.

C. Herders, pastoralists and fisherfolk

25. The protection of land-users' rights should not be limited to improving farmers' security of tenure. Fisherfolk need access to fishing grounds and may be severely affected by the fencing-off of land that provides access to the sea or to rivers. Pastoralists need grazing grounds for the animals that they raise. For these groups, as well as those practicing itinerant forms of agriculture, the formalization of property rights and the establishment of land registries may be the problem, not the solution: it may cause them to be fenced off from the resources on which they depend, making them victims of the vast enclosure movement that may result from titling.[55] In Kenya, pastoralists whose rights were ignored in the formalization process have reportedly been the victims of violent land-grabbing by ranchers and others seeking scarce resources. Since they have no legal claim to the land, they cannot seek redress.[56] In the United Republic of Tanzania, five years after a major titling effort had begun, pastoralists reported their eviction from multiple common grazing areas and were under threat of losing other grazing lands because those lands had been classified as "unused".[57]

26. For these groups, the existence of commons is vital. As noted by the Commission on Legal Empowerment of the Poor, in some legal cultures, community-based ownership of natural resources such as grazing lands, forests, water, fisheries and surface minerals is a traditional and effective way to grant control and proprietary rights to persons who have little or no other property. Such systems should be both recognized and fully protected against arbitrary seizure.[58] Indeed, under existing international law, the requirements applicable to indigenous peoples may have to be extended to at least certain traditional communities that entertain a similar relationship with their ancestral lands, centred on the community rather than on the individual.[59] That would encourage the management of common-pool resources at the local level by the communities directly concerned, rather than through top-down prescriptions or privatization of the commons. When such arrangements are institutionalized,[60] the decentralized management of common-pool resources, recognizing their function as collective goods, is recognized as highly effective. Those negotiating the modalities of the use of the commons have the best information about its carrying capacity, and thus about uses that are sustainable, and the users have strong incentives to monitor the use of the commons and to report infractions.[61]

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[55] World Bank, *World Development Report 2008*, p. 139.

[56] Statement by Centre for Minority Rights Development to the 41st Session of the Committee on Economic, Social and Cultural Rights: Examination of State Party Report on Kenya, 3 November 2008.

[57] Chambi Chachage, *Prospects and Pitfalls of Legal Empowerment of the Poor in Tanzania: Some Key Observations* (2006), p. 10.

[58] Commission on Legal Empowerment of the Poor, "Making the law work for everyone", *Report of the Commission on Legal Empowerment of the Poor* (2008), vol. I, p. 65.

[59] Inter-American Court of Human Rights, *Case of Moiwana Village v. Suriname* (judgement of 15 June 2005), paras. 132-133; and *Case of the Saramaka People v. Suriname* (judgement of 28 November 2007), para. 86.

[60] Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990), chap. 5.

[61] See Ashwini Chhatre and Arun Agrawal, "Trade-offs and synergies between carbon storage and livelihood benefits from forest commons", *Proceedings of the National Academy of Science*, vol. 106 (2009), pp. 17667-17670.

IV. Agrarian reform[62]

27. In the presence of the sometimes highly unequal distribution of land in rural areas, strengthening security of tenure may not be sufficient; land redistribution may be required. Article 11, paragraph 2 (a), of the International Covenant on Economic, Social and Cultural Rights recognizes the connection between the right to food and the use of natural resources, committing States to "developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources". This should be understood as encouraging agrarian reform that leads to more equitable distribution of land for the benefit of smallholders, both because of the inverse relationship between farm size and productivity and because small-scale farming (and linking farmers more closely to the land) may lead to more responsible use of the soil.[63] The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted in 2004 by the States members of the Food and Agriculture Organization of the United Nations (FAO), also encourage agrarian reform (guideline 8.1).

A. Why agrarian reform?

28. Agrarian reform leading to owner-operated family farms is desirable for a number of reasons. As land is transferred to family farms, idle lands of large estates are brought into production, thus increasing productivity levels.[64] A 2003 World Bank analysis of land policies in 73 countries between 1960 and 2000 shows that countries in which the distribution of land was initially more equitable achieved growth rates two to three times higher than those in which land distribution was initially less equitable.[65] Figure I highlights the correlation between the Gini coefficient for land and average per capita growth in gross domestic product (GDP), illustrating the link between unequal initial land distribution and slower economic growth.

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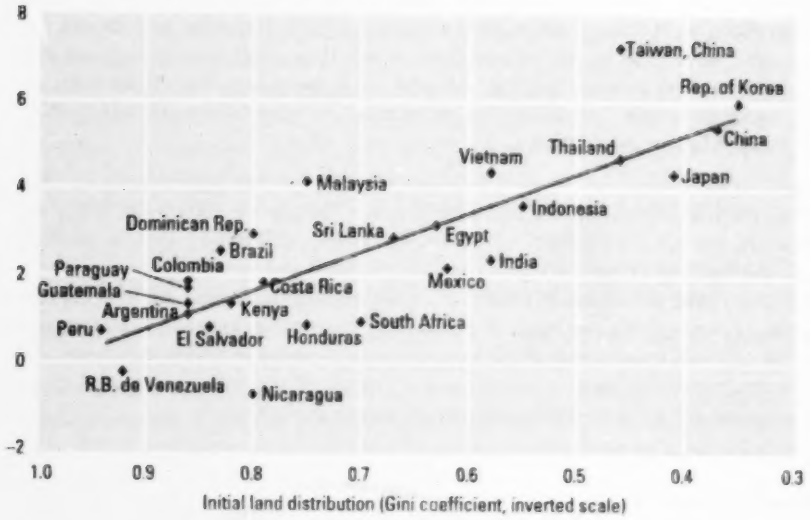
[62] "Land reform" and "agrarian reform" are often used interchangeably in the literature. In the present report, "agrarian reform" refers to land redistribution policies (systematic change in land rights distribution) and the rural development policies that are crucial if such redistribution is to be successful.

[63] A/57/356, para. 30.

[64] David Palmer et al., "Towards improved land governance", Land Tenure Working Paper 11 (FAO and United Nations Human Settlements Programme, 2009), p. 31. On the inverse farm-size productivity relationship and scale effects in agriculture, see Abhijit Banerjee, "Land reforms: prospects and strategies" (Massachusetts Institute of Technology, Department of Economics Working Paper Series, Working Paper 99-24, 1999), pp. 1-5; Saturnino Borras, Jr. et al., "Agrarian reform and rural development: historical overview and current issues", Institute of Social Studies/UNDP Land, Poverty and Public Action Policy paper No. 1 (2007), p. 1.

[65] Deininger, *Land Policies for Growth and Poverty Reduction*, 2003; Keith Griffin et al., "Poverty and the distribution of land", *Journal of Agrarian Change*, 2(3), 2002, p. 315.

Figure I
Average per capita growth in GDP, 1960-2000



Source: World Bank, *World Development Report 2006: Equity and Development* (2005).
Note: Land distribution is measured using the Gini coefficient.

29. The poverty-reducing potential of more equitable land distribution is further illustrated by statistical analyses showing that "a decrease of one third in the land distribution inequality index results in a reduction in the poverty level of one half in about 12-14 years. The same level of poverty reduction may be obtained in 60 years by agricultural growth sustained at an annual average of 3 per cent and without changing land distribution inequality".[66] Land reforms in Asia following the Second World War resulted in a 30 per cent increase in the incomes of the bottom 80 per cent of households, while leading to an 80 per cent decline in the incomes of the top 4 per cent.[67]

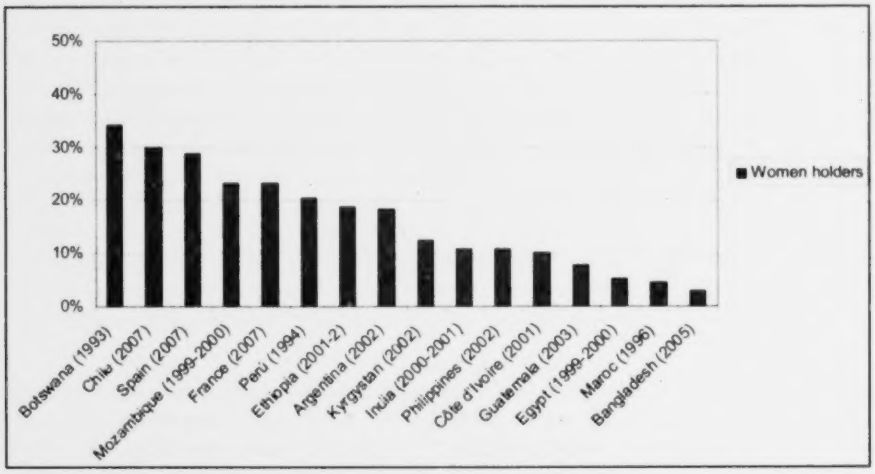
30. In addition to its economic functions of stimulating growth and reducing rural poverty, more equitable access to land for the rural poor contributes to social inclusion and economic empowerment.[68] Access to land also improves food security, since it makes food more easily and cheaply available, providing a buffer against external shocks.[69] Evidence resulting from land redistribution in China suggests that "even though access to land insures household income only moderately against shocks, it provides almost complete insurance against

[66] M. R. El-Ghonemy, "Land reform development challenges of 1963-2003 continue into the twenty-first century", *Land Reform, Land Settlement and Cooperatives*, 2003/2, p. 40.
[67] Veronika Penciakova, "Market-led agrarian reform: a beneficiary perspective of Cédula da Terra", London School of Economics Working Paper Series No. 10-100 (2010), p. 8.
[68] Julian Quan, "Land access in the 21st century: issues, trends, linkages and policy options", Livelihood Support Programme Working Paper 24 (FAO, 2006), p. 3.
[69] M. R. Carter, "Designing land and property rights reform for poverty alleviation and food security", *Land Reform, Land Settlement and Cooperatives*, FAO, 2003/2.

malnutrition".[70] More equitable land distribution and the development of owner-operated family farms are thus desirable on both efficiency and equity grounds.[71] Small family-owned farms can use the land in more sustainable ways, since sustainable farming is often more labour-intensive and requires the linking of farmers to the land. Moreover, where rural areas face high unemployment and underemployment and relative scarcity of land, it is more sensible, from both an economic perspective and a social justice perspective, to raise land productivity than to try to increase labour productivity.

31. Finally, land reform may be seen as an opportunity to strengthen access to land for women, particularly single women and widows. Article 14, paragraph 2 (g), of the Convention on the Elimination of All Forms of Discrimination against Women guarantees the right of women to equal treatment in land and agrarian reform as well as in land resettlement schemes. However, there remain laws and social customs such as those ensuring that the land of a deceased husband belongs to his sons, not to his widow, despite the flagrant violation of women's rights to which this leads. As a result, women still represent a significant minority of the total number of title-holders, as illustrated by the statistics set out in figure II.[72]

Figure II
Proportion of women among the total number of title-holders



32. Land reform may be seen as an opportunity to remedy this imbalance, either by prioritizing the needs of households headed by single women or widows, or by ensuring systematic joint titling in the reform process.

[70] Klaus Deininger and Hans Binswanger, "The evolution of the World Bank's land policy: principles, experience and future challenges", *World Bank Research Observer* 14(2) (1999), p. 256.

[71] Ibid., p. 248.

[72] Compiled by the author on the basis of the FAO Gender and Land Rights Database at http://www.fao.org/gender/landrights (accessed on 19 May 2010).

B. Contribution of land reform to the realization of the right to adequate food

33. The most recent pledges to pursue land reform were made at the International Conference on Agrarian Reform and Rural Development of FAO, convened in Porto Alegre, Brazil, in March 2006. The Final Declaration adopted at the Conference encourages the holding of a national and inclusive dialogue to ensure significant progress on agrarian reform and rural development and the establishment of appropriate agrarian reform "mainly in areas with strong social disparities, poverty and food insecurity, as a means to broaden sustainable access to and control over land and related resources".[73] The Governments represented at the Conference also recommended that the FAO Committee on World Food Security adopt of a set of reporting guidelines in order to monitor the implementation of the Declaration.[74]

34. The preparation of the Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources, led by FAO, is the single most important attempt to follow up on the commitments made at the Conference,[75] and the Declaration of the World Summit on Food Security, held in 2009, underlines that link.[76] It is too early to assess the Guidelines in the light of what they promise to achieve. At the regional level, however, the African Union's Framework and Guidelines on Land Policy in Africa are an important step in that direction, and the Latin American project to follow up on the Conference, launched in August 2009, involves a large number of countries in the operationalization of the commitments set out in the Declaration. But the overall picture remains uneven across regions.

35. It can be argued that part of the reason for this mixed outcome, lies in the strongly ideological overtones of the debate about how to implement land reform. Over the past generation, the major divide has been between centralized, or State-led, agrarian reform, effectuated through State land acquisitions compensated at below-market prices, and decentralized, or market-led, agrarian reform, based on the principle of a willing buyer and a willing seller. Although State-led agrarian reform has become less common, FAO continues to receive requests for assistance regarding such reform,[77] and certain countries are still redistributing land or have committed to doing so. Since the 1990s, however, there has been a trend towards market-led agrarian reform, as illustrated by programmes such as the Cédula da Terra project, launched in Brazil during the period 1996-2001 and since renewed; the Colombian programme developed under Agrarian Law 160 of 1994; the South African Reconstruction and Development Programme, launched in 1994; the Community-Based Rural Land Development Project in Malawi; and the voluntary land transfer scheme in the Philippines.

36. Unfortunately, although a number of social movements are seeking to increase pressure on Governments (including by resorting to occupations of land), to address this issue, the sense of urgency regarding land redistribution has decreased, because

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[73] Final Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD 2006/3), para. 29.

[74] Ibid., para. 30.

[75] FAO, *Towards Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* (2008), p. 4.

[76] Declaration of the World Summit on Food Security (WSFS 2009/2), para. 18.

[77] Maximiliano Cox et al., "FAO in agrarian reform", *Land Reform, Land Settlement and Cooperatives*, 2003/2, p. 25.

of the end of the cold war and because of the conviction of many policymakers that technology-driven productivity improvements might be a less contentious alternative to agrarian reform.[78]

37. There are strong arguments, however, in favour of land reform as contributing to the progressive realization of the human right to food, at least in contexts characterized by (a) a high degree of concentration of land ownership (such as a level of inequality higher than a Gini coefficient of 0.65), combined with (b) a significant level of rural poverty attributable to landlessness or the cultivation of excessively small plots of land by smallholders. The implication is that States should monitor existing inequalities in terms of access to land and, where both circumstances are present, should allocate the maximum available resources to agrarian reform schemes and implement those programmes in accordance with the principles of participation, transparency and accountability, to protect them from being appropriated by local elites. Where States fail to establish land redistribution schemes, they should provide justifications for not having done so.

38. While State-led agrarian reforms can generally be quite effective in addressing deeply entrenched inequalities in access to land provided certain conditions are met, market-led agrarian reforms have been less successful in that regard, sometimes even leading to the reconcentration of land, for reasons similar to those that explain the limits of titling as a means to ensure security of tenure.[79] Important lessons can be drawn from past experiences: the success of State-led land reform programmes depends not only on effective land ceiling laws and other appropriate safeguards, such as legal frameworks that clearly define beneficiaries and exempted land, but also on continued social mobilization by peasant organizations, which can be vital partners in the implementation of policies to provide support to new beneficiaries.[80] However, if the redistribution of land is to be sustainable, the beneficiaries must also be supported through comprehensive rural development policies. It has been estimated that improving access to credit and markets, as well as rural extension, can account for 60 to 70 per cent of the total costs of a land reform, exceeding the costs of acquiring and transferring the land.[81] The failure of Latin American reforms when compared with Asian reforms has been attributed to the fact that Latin American reforms have traditionally focused solely on access to land, neglecting rural development policies.[82] In order to be successful, land redistribution must be accompanied by broader agrarian reform policies that support smallholders and improve their ability to compete against larger farms; otherwise, there will be strong

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[78] See Cox et al., "FAO in agrarian reform", p. 2, and Borras et al., "Agrarian reform and rural development", p. 11.

[79] This conclusion is drawn from a thorough analysis of the wide body of literature on the respective advantages and drawbacks of State-led and market-led agrarian reform models over the past three decades, which cannot be summarized here. Important references include: Saturnino Borras, Jr. and Terry McKinley, "The unresolved land reform debate: beyond State-led or market-led models", Policy Research Brief No. 2 (UNDP, 2006); Palmer et al., "Towards improved land governance", p. 31; Quan, "Land access in the 21st century", p 12; P. Rosset et al., *Promised Land: Competing Visions of Agrarian Reform*; Borras et al., "Agrarian reform and rural development", pp. 4-8; and Cox et al., "FAO in agrarian reform", p. 13.

[80] Borras and McKinley, "The unresolved land reform debate", p. 3; Cox et al., "FAO in agrarian reform", p. 21.

[81] Palmer et al., "Towards improved land governance", p. 31.

[82] World Bank, *Land Policies for Growth and Poverty Reduction* (World Bank and Oxford University Press, 2003), p. 146.

incentives for land reform beneficiaries to sell their land to large landowners.[83] Women should be prioritized in such programmes, as under the Young Farm Women's Training Programme in the Canadian province of Manitoba or in the strategy currently being developed in Norway by the farming sector and the Ministry of Agriculture and Food, aimed at achieving 40 per cent participation by women in agriculture.[84] Land ceiling laws can also help. Although such laws are often circumvented by large landowners — for example, by registering land under the names of proxies — they can increase the amount of land available for redistribution to the poorest households and limit the risk of land reconcentration following reform.[85] A similar result can be achieved by subjecting land transactions to administrative authorization, which enables the administration to object to transactions that would lead to the unacceptable concentration of land, as in Germany under section 9 (1) of the Land Transactions Act.

V. Recommendations

39. **In a context in which commercial pressures on land are increasing, it is crucial that States improve the protection of land users. The following recommendations seek to give concrete meaning to the land-related aspects of the human right to food.**

40. **In order to respect the right to food, States should:**

(a) **Ensure security of tenure. States should take measures to confer legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.[86] The adoption of anti-eviction laws imposing strict conditions for interference with the rights of land users should be seen as a priority. This should supplement any strengthening of the regulatory framework concerning expropriation, which itself should provide clear procedural safeguards for landowners while, at the same time, providing for the possibility of agrarian reform where land concentration is excessive;**

(b) **Refrain from criminalizing legitimate social protest. Where insufficient progress has been made on the implementation of the commitments set out in the Final Declaration of the International Conference on Agrarian Reform and Rural Development, and where deep land inequalities remain, the non-violent occupation of land by landless movements should not be criminalized. Human rights defenders who protest evictions and defend or promote land rights should be protected;**

(c) **Respect the needs of special groups. States should implement the specific rights of indigenous peoples by demarcating their lands and territories**

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[83] The 22 recommendations made in the 2008 International Assessment of Agricultural Knowledge, Science and Technology for Development provide a good overview of what such comprehensive policies should contain; available at http://www.agassessment.org/.

[84] In Norway, although discrimination against women in access to agricultural land has now been abolished, only 14.3 per cent of farmers are women.

[85] El-Ghonemy, "Land reform development challenges of 1963-2003 continue into the twenty-first century", p. 37.

[86] A/HRC/4/18, annex I, para. 25.

and by providing them with specific protection. States should also protect access to fishing grounds, grazing grounds and water points for fisherfolk, herders and pastoralists, for whom the protection of commons is vital. The recognition of communal rights should extend beyond indigenous communities, at least to certain communities that entertain a similar relationship with the land, centred on the community rather than on the individual;

(d) Prioritize development models that do not lead to evictions, disruptive shifts in land rights and increased land concentration. States should carefully consider the development models that they follow, as the mainstream agro-export-led model has major detrimental impacts on the access to land of vulnerable groups, disproportionately favouring the largest producers and landowners. Land investments implying an important shift in land rights should represent the last and least desirable option, acceptable only if no other investment model can achieve a similar contribution to local development and improve the livelihoods within the local communities concerned.

41. **In order to protect the right to food, States should:**

(a) Conduct decentralized mapping of various users' land rights and strengthen customary systems of tenure. Mapping should be performed at the level of the local community and in a participatory manner. While customary systems of tenure may receive legal recognition, public authorities should ensure that appropriate safeguards are established in order to ensure that control by the community will not be exercised arbitrarily or in ways that lead to discrimination or inequitable outcomes, in keeping with international norms and standards. States should establish appropriate mechanisms for the resolution of land conflicts between landlords and tenants, between land users and the State or between private-sector entities involved in development projects;

(b) Adopt tenancy laws, and effectively implement existing laws against the pressure to free land for private investors. The adoption of tenancy laws can protect tenants from eviction and from excessive levels of rent. Such laws can also allow a tenant's heirs to occupy the land if the tenant dies, and provide the tenant with the right to pre-emption if the landowner wishes to sell (ideally, at a below-market price); they can provide for the joint titling of husband and wife as tenants, in order to protect widows from the risk of eviction; and they can ensure that the tenant will be allowed to remain on the land if the property changes hands;

(c) Ensure that all land investment projects are consistent with the relevant obligations under international human rights law, as reiterated in a previous contribution by the Special Rapporteur.[87]

42. **In order to ensure the enjoyment of the right to food, States should:**

(a) Implement the conclusions set out in the Final Declaration of the International Conference on Agrarian Reform and Rural Development and prioritize "improved" State-led land redistribution programmes. States should implement land redistribution programmes where a high degree of land ownership concentration (which could be defined as a level of inequality higher

[87] A/HRC/13/33/Add.2.

than a Gini coefficient of 0.65) is combined with a significant level of rural poverty attributable to landlessness or to the cultivation of excessively small plots of land by smallholders. Redistributive agrarian reforms should: (a) include comprehensive rural development policies that follow the recommendations resulting from the International Assessment of Agricultural Science and Technology for Development, including extension systems, access to credit and agricultural research and support beneficiaries, provided with sufficient budgets; (b) make use of land ceiling laws and be based on legal frameworks that clearly define beneficiaries and exempted land; (c) encourage communal ownership systems, rather than focusing solely on individual beneficiaries; (d) be implemented in accordance with the principles of participation, transparency and accountability, in order to prevent their appropriation by local elites; (e) be grounded in constitutional provisions regarding the social functions of land, where such provisions exist. All States should monitor land inequalities before and after the implementation of such programmes;

(b) Ensure that market-led land reforms are compatible with human rights. If, despite the reservations expressed in the present report, States choose to seek to improve security of tenure through titling programmes and the creation of land rights markets, they should:

(i) Regulate such markets by taking appropriate measures to prevent increased land speculation, increased land concentration, abuse of customary forms of tenure by new landowners, and distress sales by indebted farmers;

(ii) Ensure that titling schemes benefit women and men equally, correcting existing imbalances if necessary;

(iii) Encourage communal ownership systems (rather than individual titling) where local communities have a need for them;

(iv) Prioritize the titling of land for those who are dependent on land for their livelihoods and are more vulnerable to land-grabbing, rather than for those who claim to be the formal landowners;

(c) Establish specialized recourse mechanisms at the local level that are accessible, work transparently and include safeguards against corruption.

43. The Special Rapporteur also makes the following recommendations to the international community:

(a) Establish adequate governance instruments to operationalize the commitments set out in the Final Declaration of the International Conference on Agrarian Reform and Rural Development. The Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources could make a significant contribution, provided that they:

(i) Encompass land redistribution issues in addition to land administration issues, consistent with the Conference commitments;

(ii) Provide for the systematic and comprehensive interpretation of existing provisions of international human rights and environmental law that protect the rights of land users in all categories, whether indigenous

peoples or other rural groups such as peasants, pastoralists and fisherfolk. The international recognition of the rights of these groups is scattered among various instruments and lacks systematic interpretation. The FAO Committee on World Food Security could also play an important role by:

a. Establishing a mechanism for follow-up to the Conference commitments;

b. Commissioning an independent review by the Committee's High-level Panel of Experts on Food Security and Nutrition of best practices in agrarian reform;

(b) Donors should increase their support for the implementation of land redistribution programmes and the strengthening of land administrations. The importance of land administrations free from corruption and equipped with sufficient resources and well-trained officials has been and continues to be underestimated in the reinvestment in agriculture since the 2008 global food crisis;

(c) Governments investing in farmland abroad should ensure that they do so in accordance with their human rights obligations. They should regulate the conduct of private actors on which they can exercise an influence, thus helping to protect the human rights of the communities concerned. Similar obligations exist for development banks funding projects that have an impact on land rights (see A/HRC/13/33/Add.2, para. 5);

(d) International human rights bodies should consolidate the right to land and take land issues fully into account when ensuring respect for the right to adequate food. The Committee on Economic, Social and Cultural Rights could play a leading standard-setting role in clarifying the issue of land as a human right by issuing a general comment in that regard. Acting in their monitoring capacity, human rights bodies should examine the justifications offered by Governments that fail to put in place land redistribution programmes or policies with similar aims, despite the existence of a high degree of concentration of land ownership, combined with a significant level of rural poverty attributable to landlessness or inequitable land distribution.